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February 24, 2022

Clerk of the Supreme Court  
PO Box 40929  
Olympia WA 98504-0929

Re: Comment on Changes to GR 23

Dear Clerk:

I apologize for the length of this comment. I hope my passion for this topic is not mistaken for frustration or disdain for the Certified Professional Guardian & Conservator Board. As a former staff person to the Board, I appreciate the important purpose and vital role the Board serves in protecting Washington's vulnerable adults. The Board is one of the reasons why Washington remains a leader in this area among all the states.

This morning at a Special Meeting the Board demonstrated why GR 23 should be changed to require the Board to be subject to the Open Public Meetings Act. The Board convened today's meeting then almost immediately went into Executive Session. Returning about 35 minutes later, the Board announced they had discussed the proposed changes to GR 23 privately in executive session. The Chair of the Regulations Committee then provided a 1 or 2 minute history of the 2008 amendment to GR 23 (which limited the number of guardians on the Board) and suggested the Open Meeting Act was inapplicable.

A member of the public asked why the Board discussed GR 23 in Executive Session. The Board responded by stating they were receiving advice from their attorney. The Board clarified that their attorney (an Assistant Attorney General) was not present, but had provided a letter.

The Board then proceeded to call for a vote. The Board Chair called for discussion (from the Board only) and no Board member spoke. The Board voted unanimously to oppose the changes to GR 23. The public was left without any information on the Board's reasoning for their decision. The only public record in 2022 will be the recitation of the history of the Board's decision in 2008.

If the Board were subject to the Open Public Meetings Act, the mere fact of having an attorney present would not be sufficient to justify a closed session. Under the Open Public Meetings statute, executive session discussions must be about agency enforcement actions (e.g., Board discipline) or litigation. RCW 42.30.110 states, "This subsection (1)(i) does not permit a governing body to hold an executive session solely

because an attorney representing the agency is present. The discussion about changes to GR 23 were not about disciplinary issues or regarding any litigation. The Board had no justification for holding a closed meeting.

The Board's actions today discount the important public role they play and their obligation to make the decision-making process transparent. Case law supports requiring the Board to be subject to the Open Public Meetings Act because the Board was created by statute<sup>1</sup> and is a public agency.

Additionally, the Board provided no rationale for its opposition to ending the artificial limit on the number of certified professional guardians and conservators who could serve on the Board. The only information provided was the brief history of the 2008 decision, namely: "broad base of expertise" and "avoid the perception of conflict".

Unfortunately, the public has no way to know why a decision made in 2008 is relevant today. The 2008 reasoning presumes that a broad base of knowledge is helpful and could not come from Certified Professional Guardians and Conservators.

All CPGCs must demonstrate they have skills that are transferrable to the work; and they come from backgrounds in nursing, social work, law, government, and the financial industry. CPGCs have much of the same broad expertise as non-CPGC Board members. Plus CPGCs have "subject-matter" expertise in the administration of guardianship and conservatorship services. That subject-matter expertise is a prerequisite to assessing applicants, overseeing education requirements, and administering discipline.

The 2008 concern about the perception of conflict if the regulated profession were in the majority of the regulatory body has not been a consideration for other regulated professions in Washington. And, unlike any other profession I can think of, CPGCs are regulated by both the Board and the Superior Courts.

Professional guardians and conservators come to this work out of a desire to serve their community. They are often on their second careers with many years of experience in a related area. They have a strong incentive to hold others of their profession to the highest standards.

Thank you for considering my additional comments.

Sincerely,



DEBORAH JAMESON

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<sup>1</sup> See attached: 1997 - ESHB 1771



## APPENDIX C

### Washington Laws of 1997, Chapter 312 ESHB No. 1771

AN ACT Relating to court appointed guardians; amending RCW 11.88.020; adding a new section to chapter 11.88 RCW; creating a new section; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 11.88.020 and 1990 c 122 s 3 are each amended to read as follows:

(1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person; ~~any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an incapacitated person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an incapacitated person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW.~~ A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(1) ~~(a)~~ under eighteen years of age except as otherwise provided herein;

(2) ~~(b)~~ of unsound mind;

(3) ~~(c)~~ convicted of a felony or of a misdemeanor involving moral turpitude;

(4) ~~(d)~~ a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(5) ~~(e)~~ a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(6) ~~(f)~~ a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.



## APPENDIX C

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NEW SECTION. Sec. 2. A new section is added to chapter 11.88 RCW to read as follows:

As used in this chapter, "professional guardian" means a guardian appointed under this chapter who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons.

NEW SECTION. Sec. 3. (1) The administrator for the courts shall study, and make recommendations on, standards and criteria for implementing a system of certification of professional guardians as defined in section 2 of this act and improved coordination between guardians and guardians ad litem.

(2) In conducting the study and preparing the recommendations, the administrator may include examination of:

- (a) Criteria for certification as a professional guardian;
- (b) A fee structure that will make the certification process self-supporting;
- (c) Whether persons other than an alleged incapacitated person should be given standing to request a jury trial to determine incapacity;
- (d) Whether, following the appointment of a guardian, a guardian ad litem may continue to serve at public expense;
- (e) Whether the superior court should have authority to limit fees for attorneys, guardians, and guardians ad litem;
- (f) The appropriate entity to certify professional guardians; and
- (g) Grounds for discipline of professional guardians.

(3) In conducting the study, the administrator shall consult with the appropriate groups and interested parties including, but not limited to, representatives of senior citizens, members of both chambers of the legislature, the bar association, superior court judges, associations affiliated with persons with developmental and chronic functional disabilities, health care organizations, persons who act as guardians for compensation and on a voluntary basis, and guardians ad litem.

(4) The administrator shall submit the results of the study and recommendations to the governor and legislature not later than January 1, 1998.

NEW SECTION. Sec. 4. Sections 1 and 2 of this act take effect January 1, 1999.



# HOUSE BILL REPORT

## HB 1771

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As Reported By House Committee On:  
Law & Justice

**Title:** An act relating to court appointed guardians.

**Brief Description:** Providing for certification of professional guardians.

**Sponsors:** Representatives Mitchell, Tokuda, Constantine, Sheahan, Keiser, Mason, Blalock, Costa, Conway, Butler, Murray and Cody; by request of Secretary of State.

**Brief History:**

**Committee Activity:**

Law & Justice: 3/5/97 [DPS].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney; Lantz; Radcliff and Skinner.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Carrell; Lambert and Sherstad.

**Staff:** Edie Adams (786-7180).

**Background:** A court may appoint a guardian over the estate or the person of an incapacitated person. A person is incapacitated if the individual is at a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety, or at risk of financial harm because of an inability to manage his or her property or financial affairs.

Generally, any resident of the state who is at least 18 years of age, of sound mind, and has not committed certain crimes may be appointed as a guardian. If authorized, a trust company or national bank may serve as guardian of the estate of an incapacitated person, and a nonprofit corporation may serve as guardian of the person and/or estate of an incapacitated person.

A testamentary guardian is a person appointed as the guardian of a minor child by a parent in the parent's will.

**Summary of Substitute Bill:** The Office of the Administrator for the Courts (OAC) is directed to develop a system for standards and administration of certification of professional guardians.

The express authority for a nonprofit corporation to act as guardian of the person and/or the estate of an incapacitated person is removed. An individual or guardianship service may be appointed as the professional guardian of the person and/or the estate of an incapacitated person if the individual or guardianship service meets certification requirements established by the OAC. Testamentary guardians and financial institutions serving as the guardian of the estate of an incapacitated person are not subject to the certification requirements.

A professional guardian is a court-appointed guardian who is not a member of the incapacitated person's family, charges a fee for providing guardianship services, and serves as guardian for at least three incapacitated persons.

**Substitute Bill Compared to Original Bill:** The original bill does not provide the exemption from certification for testamentary guardians and financial institutions that serve as guardian of the estate of an incapacitated person. The original bill does not contain a delayed effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The act takes effect July 1, 1998.

**Testimony For:** Certification of guardians will ensure that people who serve in this capacity are qualified to do so. When a guardian is appointed for an incapacitated person, that person's rights are being taken away. The guardian has to make a wide variety of decisions for the ward relating to health care, housing, and financial needs. When a guardian is appointed, the parties should have confidence that the person has had training and understands the diversity and complexity of decisions that have to be made and how those decisions will affect the ward. Currently, an incompetent guardian can be removed in individual cases, but can show up in another county and be appointed to represent a different individual.

**Testimony Against:** None.

**Testified:** Representative Mitchell, prime sponsor; Tom O'Brien, Washington Association of Professional Guardians and Guardianship Services of Seattle (pro); Liz



Lindley, Washington Association of Professional Guardians (pro); Jim Hardman, attorney (pro); John Jardine, Washington Association of Professional Guardians (pro); Brandon Johnson, Washington Association of Professional Guardians and Northwest Support Services (pro); and Sheila Brasheay, professional guardian (pro).

# SENATE BILL REPORT

## ESHB 1771

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As Reported By Senate Committee On:  
Human Services & Corrections, April 2, 1997

**Title:** An act relating to court appointed guardians.

**Brief Description:** Providing for certification of professional guardians.

**Sponsors:** House Committee on Law & Justice (originally sponsored by Representatives Mitchell, Tokuda, Constantine, Sheahan, Keiser, Mason, Blalock, Costa, Conway, Butler, Murray and Cody; by request of Secretary of State).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 3/27/97, 4/2/97 [DPA].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Kohl, Schow and Stevens.

**Staff:** Richard Rodger (786-7461)

**Background:** A court may appoint a guardian over the estate or the person of an incapacitated person. A person is incapacitated if the individual is at a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety, or at risk of financial harm because of an inability to manage his or her property or financial affairs.

Generally, any resident of the state who is at least 18 years of age, of sound mind, and has not committed certain crimes may be appointed as a guardian. If authorized, a trust company or national bank may serve as guardian of the estate of an incapacitated person, and a nonprofit corporation may serve as guardian of the person and/or estate of an incapacitated person.

A testamentary guardian is a person appointed as the guardian of a minor child by a parent in the parent's will.

**Summary of Amended Bill:** The Office of the Administrator for the Courts (OAC) is directed to study and make recommendations regarding the implementation of a system for standards and administration of certification of professional guardians.

An individual or guardianship service may be appointed as the professional guardian of the person and/or the estate of an incapacitated person if the individual or guardianship service meets certification requirements established by OAC. Testamentary guardians and financial



institutions serving as the guardian of the estate of an incapacitated person are not subject to the certification requirements.

A professional guardian is a court-appointed guardian who is not a member of the incapacitated person's family, charges a fee for providing guardianship services, and serves as guardian for at least three incapacitated persons.

**Amended Bill Compared to Substitute Bill:** The striking amendment adds a study provision and the effective date is moved to January 1, 1999.

**Appropriation:** None.

**Fiscal Note:** Available on companion SB 5667.

**Effective Date:** The study provision takes effect in 90 days. The remainder of the bill takes effect on January 1, 1999.

**Testimony For:** This bill will help protect persons who are incapacitated to handle their own affairs by requiring the certification of persons who hold themselves out as professional guardians.

**Testimony Against:** None.

**Testified:** Ralph Munro, Secretary of State; John Jardine, Washington Association of Professional Guardians (pro); Liz Lindley, Lifetime Advocacy Plus (pro).

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Subject:** FW: Comments on GR 23  
**Date:** Thursday, February 24, 2022 4:37:41 PM  
**Attachments:** [20220224 L Court Clerk re GR 23.pdf](#)

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**From:** deborah@NEILLAW.COM [mailto:deborah@NEILLAW.COM]  
**Sent:** Thursday, February 24, 2022 4:33 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comments on GR 23

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Hello,

Attached please see my comments on the proposed changes to GR 23.

Thank you.

Deborah Jameson  
(Pronouns: she/her/hers)

Neil & Neil, P.S.  
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